



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201234029**
Release Date: 8/24/2014

Date: June 1, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.33-00; 501.32-01; 501.36-00

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: May 30, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B= State
C= Date of Incorporation
D= Name of for-profit Corporation
E= Founder/President
F= Name of Consulting Company
G= Name of Consultant
H = Date of Contract

UIL:

501.33-00
501.32-01
501.36-00

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issues

- Do your net earnings inure to the benefit of insiders thus precluding exemption under section 501(c)(3) of the Code?

Yes, for the reasons stated below.

- Does your operation for commercial purposes cause you to fail the operational test by not operating exclusively for an exempt purpose under section 501(c)(3) of the Code?

Yes, for the reasons stated below.

Letter 4036 (CG) (11-2005)
Catalog Number 47630W

- Do your operations serve the private benefit of consultant G and her consulting company F which would preclude exemption under section 501(c)(3) of the code?

Yes, for the reasons explained below.

Facts

E, Your President was introduced to G and her company F by a volunteer of F. G provided E with an overview of the types of grants that were available from the government. E entered into a contract agreement with consultant G and G's consulting company named F on H and made a payment of the amount listed on the contract.

You then incorporated as a non-profit corporation under the laws of B on date C. Your Articles of Incorporation state your purposes are to be a sponsor of a preservation farm with federal and local tax exemption.

The contract E entered into with F, itemized services at a cost of more than \$16,000 that include helping to establish you as a corporation and assist in preparing the Form 1023 application for tax exemption. You also explained that G and G's consulting company F will help apply for federal grants after exemption is granted. As per the contract you would be responsible to pay for any additional expenses not part of the original agreement. You were to provide all documents or information required by F in a timely manner. F assisted you in the preparation of all documents and checked them to make sure they were correct. Payments for your expenses were then made by F.

Your application for exemption explained that you have two goals. The first goal is to transform a for-profit hay farm, named D and owned by your President, E, into one of improved forage production with quality vegetation cover eliminating the possibility of ground erosion. Another goal is to protect high value agricultural land for environmental conservation and preservation of endangered wildlife.

Your planned activities are to establish a preservation farm area of approximately 500 acres located within the for-profit hay farm operation, D. The for-profit hay farm, D, is a family business owned and operated by your President, E. You described the area identified for the preservation farm as "not accessible to the general public due to either natural barriers, such as creeks, drainage, and fences," and that there are signs stating that trespassing is not permitted. You also indicated there are no public paths, trails or roads on it.

You are governed by members of the E family and by individuals with a business relationship to the E family hay farm operation. Your President who is also the owner of D will continue to farm the preservation farmland area as part of the for-profit hay farm operation that includes a total area of approximately 1000 acres.

Your budgets report you anticipate receiving an estimated \$2 million in federal grants and you have budgeted approximately \$300,000 for the cost of the preservation farmland. You explained that various government agencies have grants available to preserve land. We asked

if you would lease or purchase the land owned by E that will make up the preservation farm. You replied that it has not yet been determined and it will depend on the requirements set by the grantee agency. Your project description reports that your intentions are to purchase 14 lots owned by either your President E or his for-profit farm, D. The purchase or lease price has not been determined. Your purchase or lease of the property from E or D will depend on the availability of grant funds and other government requirements.

You are registered with the merchants' registry of the treasury department of B as a merchant conducting the commercial activities of Agriculture and Silviculture. The Farm area has been used and it is planned to be used in the near future for farming and/or hay production and it is your intention to preserve it for that purpose.

In addition to applying for government grants on your behalf your consultant, G, contracted a company to prepare an Environmental Site Assessment for the preservation farmland. The Environmental Site Assessment report was prepared for the purpose of identifying any areas, which could be environmentally impacted. This report described adverse environmental conditions on the preservation farmland area that "may impede or preclude the completion of any intended sale-purchase transaction". The report included observations and pictures of petroleum spills and substandard "structures that are in use or may have been used to store oil, waste oil, diesel, and or hazardous substances."

In your response to the Environmental Site Assessment you represented that the environmental issues were addressed. You paid an independent contractor to clean up the areas in question. You also explained that your President has contracted with a company for the collection and disposal of used oil for recycling purposes.

The charges for the environmental study were paid from the Land Concepts (site conditions) portion of the contract by F. None of the other studies or appraisals etc listed on the contract with F has been conducted.

Law

Section 170(h)(4) of the Internal Revenue Code. Conservation purpose defined.

(A) In general, For purposes of this subsection the term "conservation purpose" means-

- (i) the preservation of land areas for outdoor recreation by, or the education of, the general public,
- (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- (iii) the preservation of open space (including farmland and forest land) where such preservation is-
 - (I) for the scenic enjoyment of the general public, or
 - (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or
- (iv) the preservation of a historically important land area or certified historic structure.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, educational and other purposes, provided that no part of the net earnings inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(a)-1(c) of the regulations defines "private shareholder or individual" to mean persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) of the regulations defines "private shareholder or individual" to mean persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subsection, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations states that the term 'charitable' is used in section 501(c)(3) of the Code in its generally accepted legal sense.

Section 1.501(c)(3)-1(e) of the regulations provides that an organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) even though its net profits do not inure to the benefit of individual members of the organization.

Rev. Rul. 67-292, 1967-2 C.B. 184. An organization formed for the purpose of developing a sanctuary for wild birds and animals for the education of the public may be exempt from Federal income tax as an educational organization under section 501(c)(3) of the Internal Revenue Code of 1954.

Rev. Rul. 76-204, 1976-1 C.B. 152. A nonprofit organization formed for the purpose of preserving the natural environment by acquiring by gift or purchase, ecologically significant

undeveloped land, and either maintaining the land itself with limited public access or transferring the land to a government conservation agency by outright gift or being reimbursed by the agency for its cost, qualifies for exemption.

Rev. Rul. 78-384, 1978-2 C.B. 174. A nonprofit organization that owns farmland and restricts its use to farming or other uses the organization deems ecologically, suitable, but is not operated for the purpose of preserving ecologically significant land and does not otherwise establish that it serves a charitable purpose, does not qualify for exemption under section 501(c)(3). Rev. Rul. 76-204 is distinguished.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Old Dominion Box Co. v. United States, 477 F. 2d 340 (4th Cir. 1973), cert. denied 413 U.S. 910 (1973). The Fourth Circuit held that operating for the benefit of private parties constitutes a substantial nonexempt purpose.

In Federation Pharmacy Services Inc v Commissioner, 72 T.C. 687 (1979), aff'd, 625 F.2d 804 (8th Cir. 1980) the court held that, while selling prescription pharmaceuticals to elderly persons at a discount promotes health, the pharmacy did not qualify for recognition of exemption under section 501(c)(3) of the Code. Because the pharmacy operated for a substantial commercial purpose, it did not qualify for exemption.

In Airlie Foundation vs. Internal Revenue Service 283 F.Supp.2d 58 (D.D.C., 2003), the court found that the defendant IRS was correct in denying plaintiff's application for recognition as a section 501(c)(3) entity. Because plaintiff operates its conference center in a manner consistent with that of a commercial business, it does not meet the requirements of Code Section 501(c)(3) and is therefore not entitled to tax exempt status.

Application of Law

Inurement

You do not qualify for exemption under section 501(c)(3) of the Internal Revenue Code because your net earnings inure to the benefit of your insider, E. Specifically, you were created by E who paid a consultant, G, and G's consulting company, F, to help you incorporate and look for federal grant funds that you could apply for. Once federal funding is obtained, the grant funds would be used to provide the capital needed to purchase or lease and improve or maintain land owned by E or his for-profit D. This constitutes inurement of earnings to E, and precludes exemption under section 501(c)(3) of the Code and 1.501(c)(3)-1(c)(2) of the regulations.

E has used and will continue to use the farmland to operate the E family for-profit farm operation known as D. Therefore you are operated for the private benefit of the for-profit company D, the E family and individuals with a business relationship to the E family hay farm operation. Therefore you are also not described in section 501(c)(3) and 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Private benefit

You also fail to meet the provisions of section 1.501(c)(3)-1(d)(1)(ii) of the regulations as your operations serve the private interests of G and her consulting company F. You have paid over \$16,000 to F and G for services. This amount is non-refundable. However barring the assistance with this application and the one payment for the environmental site assessment none of these services have been provided. F and G will be paid additional amounts on an hourly basis for future services to be provided. Amounts were paid to F towards application fees to the IRS that were higher than the actual fee amount remitted. F will provide technical help to you to apply for federal and private funds. Based on the copy of the one report provided it can be seen that the report is prepared for F and G.

F and G will provide assistance to you to apply for federal and private funds. You have advanced a considerable amount of money to G to help you with this process. The fact that you have used F & G to assist you with the filing of your application for a fee does not necessarily indicate that you have operated for their private benefit. However the list of expenses for payment of fees above the actual cost, and the payment of services listed that were never provided and the possibility of utilizing F and G to raise funds for you indicate private benefit is accruing to F and G. In addition F and G were not selected by a bidding process but by recommendation of a volunteer of F. Your operating for the benefit of private parties also constitutes a substantial nonexempt purpose and therefore you are similar to the organization in Old Dominion Box Co. V. United States, supra.

Failure to Meet the Operational Test

It is generally recognized that efforts to preserve and protect the natural environment for the benefit of the public serve a charitable purpose under section 501(c)(3) of the Internal Revenue Code and section 1.501(c)(3)-1(d)(2) of the regulations. However, your operations are not intended for the benefit of or enjoyment of the general public. In fact access to the public is restricted. You will continue to operate a for-profit hay farm on the property. You have not established that you will use the land for a conservation or charitable purpose as described in IRC Section 170(h)(4). In fact your goals are to improve forage production, eliminate ground erosion, and operate a commercial hay farm. Therefore you are not operated exclusively for exempt purposes as described in sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1). Since you are operating for the substantial nonexempt purpose of operating a for-profit hay farm you are also like the organization in Better Business Bureau v. United States, supra.

Your primary purpose is to carry on a for-profit hay farm on the property. Therefore you are carrying on an unrelated trade or business as described in Section 1.501(c)(3)-1(e) and therefore are not exempt under section 501(c)(3) of the Code.

You also plan to preserve land to protect wildlife, but unlike Rev. Rul. 67-292 you are not operating for educational purposes. The land you plan to preserve is farmland that is used for hay production. The preservation area is also not accessible to the general public with natural and other barriers and no public paths, trails and signs stating that trespassing is not permitted. Therefore you are not like the organization in Revenue Ruling 67-292.

From the information provided the land is not ecologically significant undeveloped land but is farmland that is owned by E and D and used for commercial hay production. In addition the land has no public access. Therefore, you are unlike the organization described in the previously cited Revenue Ruling 76-204. In addition, the Environmental Site Assessment described adverse environmental conditions that may preclude the sale or transfer of the area designated as a preservation farm.

You are more like the organization described in the above cited Revenue Ruling 78-384 which did not qualify for exemption because you are not operated for the purpose of preserving ecologically significant land but for the preservation of farm land for hay farming purposes which is not a charitable purpose.

You are similar to the organizations in Federation Pharmacy Services Inc and Airlie Foundation. Your president owns the land and the for-profit company that operates a commercial hay farm on this land. The farm area has been used and it is planned to be used for farming and hay production only. Therefore your operations are similar to that of a commercial business and you do not qualify under section 501(c)(3).

Applicant's Position

The continuous construction around your area has brought to your attention the need to conserve, protect and maintain lands to benefit wildlife and their habitat. You are especially concerned with the endangered and migratory birds in your area. You claim that by preventing the extinction and extermination of the habitat, the public will benefit as well as the wildlife.

Although the Environmental Site Assessment reported various environmental issues, you claim that the only concern was on an oil barrel that had a light leak. The issue was limited to a very small area and you have eliminated the problem. As far as you know, there are no other complaints on this matter.

Service Response to Applicant's Position

Because you plan to conserve, protect and maintain ordinary farm land owned by your President, E, you are not operating for a public purpose. Further there is no indication that the land is ecologically significant. In addition there are severe restrictions to public access such as no trespassing signs and other natural barriers on the property. Therefore, your activities do not further an exempt purpose. The Environmental Assessment substantiates the fact that the property is being used to operate a hay farm which is a commercial for-profit operation that does not qualify as an exempt activity described in section 501(c)(3) of the Code.

Conclusion

Based on the above facts and law, we conclude that:

- The use of your funds to purchase the land from E and his family and D the for-profit hay farm owned by E constitute inurement to E and his family and cause you to fail the operational test for exemption under section 501(c)(3) of the Code.
- The continued operations of the for-profit hay farm and other such activities on the property constitute a commercial activity and therefore cause you to fail the operational test for exemption under section 501(c)(3) of the Code.
- The arrangements with F and G, the payment of advances including for services not performed provide private benefit to F and G which precludes exemption under section 501(c)(3) of the Code.

Accordingly, we conclude you do not qualify for exemption under section 501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be accompanied by the following declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation

during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure, Publication 892